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No. 80-2205

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, Illinois,

Petitioner,

vs.

TONI MURRAY,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

JOINT APPENDIX

PETITION FOR CERTIORARI FILED JUNE 29, 1981
CERTIORARI GRANTED NOVEMBER 2, 1981

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JOINT APPENDIX

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The opinion of the Seventh Circuit Court of Appeals is reported at 634 F.2d 365 (7th Cir. 1981) and is included in the Petition for Certiorari as Appendix A, pages 1a through 7a.

The District Court's ruling appears in the Petition for Certiorari as Appendix B, pages 8a through 23a.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

March 23, 1979—

Plaintiff's Complaint filed in the United States District Court for the Northern District of Illinois, Eastern Division.

April 16, 1979—

City of Chicago Defendants' Motion to Dismiss filed.

April 26, 1979—

Defendant Finley's Motion to Dismiss or, In the Alternative, for Summary Judgment filed.

November 30, 1979—

Order entered granting Defendant Finley's Motion for Summary Judgment and granting the City of Chicago Defendants' Motions to Dismiss.

December 28, 1979—

Plaintiff-Appellant filed Notice of Appeal.

November 25, 1980—

Opinion and Judgment of the Court of Appeals for the Seventh Circuit.

March 11, 1981—

Amended Opinion issued by the Court of Appeals for the Seventh Circuit.

March 31, 1981—

Defendant-Appellee Finley's Petition for Rehearing En Banc denied by the Court of Appeals for the Seventh Circuit.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

(Filed March 23, 1979)

TONI MURRAY,

Plaintiff,

v.

CITY OF CHICAGO, an Illinois municipal corporation, JAMES T. ROCHFORD, former Superintendent of the Chicago Police Department, JAMES O'GRADY, Superintendent of the Chicago Police Department, Chicago Police Officers J. ZIEMKE (#2303), T. PAPPAS (#3457), Sgt. MEYERS, (#967), Other Presently Unknown Supervisors of the Chicago Police Department Warrant Execution and Recall Data and Operations Systems, and MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, Illinois, and Other Presently Unknown Agents of said Clerk employed by him at times and places relevant to the occurrences alleged herein, all Individually and in Their Official Capacities,

Defendants.

No. 79 C 1176—Civil Action For Damages
And Injunctive Relief—Jury Demanded

COMPLAINT

Plaintiff TONI MURRAY, by her attorneys LAWRENCE SCHLAM and HARVEY L. WALNER & ASSOCS., LTD., complains of defendants as follows:

JURISDICTION

1. This civil action seeks damages and other relief for actions of defendants under color of state laws, regulations, and customs, which denied to plaintiff established liberties and rights under the Constitution and laws of Illinois and of the United States. Specifically, jurisdiction is here invoked pursuant to the Fourth, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution, the provisions of Title 28 U.S.C. Sec. 1331 and 1343, and of Title 42 U.S.C. Sec. 1983, 1985, 1986 and 1988. This claim exceeds TEN THOUSAND DOLLARS ($10,000.00).

2. Notice of claim, required by Ch. 85 *Ill.Rev.Stat.* Sec. 8-102, has been timely served; a copy of said notice is attached (Exhibit "A").

PARTIES

3. Plaintiff MURRAY is and, at all relevant times, was a citizen of the United States and of Illinois and a resident of Chicago, Illinois. She was at, all pertinent times, acting lawfully, responsibly and with due care for her safety and for the preservation of her legal rights.

4. Defendant City of Chicago (hereinafter "CITY") is an Illinois municipal corporation. At all times, pertinent to this Complaint, the CITY was, of necessity, acting by and through ROCHFORD and their other employee-agents who are defendants herein. ROCHFORD, and his fellow servant CITY police defendants, had and continue to have the duty to perform the ministerial function of local law enforcement for the defendant CITY.

Included in this ministerial duty, of course, is the duty to enforce the laws of the United States.

Plaintiff, upon information and belief, alleges that CITY accepts and maintains rules and policies concerning indemnification of those of their ministerial agents for law enforcement who are defendants herein. Additionally, upon information and belief, CITY funded and continues to fund the education and training of these law enforcement defendants in, among other things, the law of constitutional criminal procedure. CITY acts and acted, at all relevant times, when and as did its employee co-defendants herein.

5. Where pertinent to this Complaint, defendant ROCHFORD was Superintendent of the Chicago Police Department. As principal officer of that department and agent for law enforcement for CITY, he had among his duties, authorizing, directing, ratifying and implementing procedures: (a) for the execution in a lawful manner of arrests and arrest warrants; (b) making readily accessible to arresting police officers accurate data concerning warrants judicially quashed and recalled; (c) to uphold state and federal constitutional law prohibiting judicially vacated and void arrest warrants from being negligently, willfully and wantonly executed against blameless individuals such as plaintiff so as to deprive said citizens of liberty and property; (d) for the proper implementation of these aforementioned lawful arrests by his fellow servant officers, as well as; (e) for learning of and correcting patterns and customs, such as complained of by plaintiff, of state and federal constitutional criminal procedure deprivations within Chicago.

6. Defendant O'GRADY is the present Chicago Superintendent of Police. He presently holds the same responsibilities and performs the same ministerial duties alleged above as to defendant ROCHFORD.

7. Defendants ZIEMKE, PAPPAS and MEYERS, at all times pertinent to this complaint, were acting under the authority and within the scope of their employment as law enforcement agents of defendant CITY; upon information and belief, they were at relevant times and continue to be trained by CITY in the law and implementation of constitutional criminal procedures. Further, they were and are under a duty to report to defendants ROCHFORD and O'GRADY patterns or customs of deprivation of constitutional rights within Chicago such as those alleged here as to plaintiff.

8. Where pertinent to this complaint, Defendant FINLEY was and is Clerk of the Circuit Court of Cook County. In that capacity, he had and has among his duties, authorizing, directing, approving, and implementing practices and procedures for: (a) receiving and recording the decisions and orders in criminal prosecutions in the Circuit Court of Cook County; (b) alone and in concert with CITY, through expeditious and reliable procedures, communicating to relevant law enforcement personnel, judgments and mandates of the judiciary of Cook County, Illinois in criminal matters such as the orders and mandates plaintiff alleges were here ignored; (c) defining and instituting effective practices and procedures to insure that the recall of an arrest warrant is communicated to law enforcement agencies in Cook County in a sufficiently timely manner so that innocent persons such as plaintiff are not unlawfully detained and unlawfully made to defend anew criminal charges which have previously been disposed of by judicial action; (d) monitoring and insuring that such practices and procedures were properly implemented by his agents and employees; and, (e) remedying failures of implementation of such procedures.

CLAIM

9. Approximately 6-12 months after plaintiff's purse and checkbook were stolen (which theft was duly reported to the police), some of these checks appeared and were unlawfully cashed at various retail stores. This resulted, naturally, in plaintiff's arrest pursuant, among others, to Complaint No. 74 M1-G453066, the charge material to and resulting in the wrongs herein alleged.

10. Plaintiff posted bond and a hearing was set for 4 November 1974, in the Circuit Court of Cook County, Criminal Division, Branch 68. At that date and place, plaintiff filed her appearance and all similar and related complaints were dismissed except Complaint No. 74 M1-G453066, which case was continued to 9 December 1974. Plaintiff, however, left Court on 4 November 1974, under the reasonable impression that all charges were dismissed; she therefore failed to appear in Branch 68 on 9 December 1974, leading to an order of Court forfeiting bond and issuing an arrest warrant. It is this arrest warrant of 9 December 1974 (D7641252), which is in issue. (See Exhibit "B".)

11. After notification of the issuance of the arrest warrant of 9 December 1974, plaintiff appeared before the aforementioned Branch 68 and, on 13 January 1975, the arrest warrant issued 9 December 1974, was quashed and recalled by court order (recall #I242516). Thereafter, on 10 February 1975, in this same Branch 68, there being no proof of deceptive practices against plaintiff, Judge Zlatnik discharged plaintiff and dismissed case No. 74 M1-G453066, said discharge and dismissal constituting the final adjudication in said matter. (See Exhibit "B".)

12. Nevertheless, fully two and one-half months after a judicial Order of Recall (on 25 March 1975), defendants ZIEMKE and PAPPAS, having no probable cause to believe plaintiff committed or was committing a crime, but acting purportedly under the "authority" of a warrant they knew or with reasonable effort should have known was void, unlawfully entered plaintiff MURRAY's then residence, unlawfully detained her and took her into custody against her will. ZIEMKE and PAPPAS then took plaintiff to the 18th District Chicago police station and then to the Central Police Headquarters at 1121 S. State Street, Chicago, where, against her will, she was forced to strip naked and submit to searches conducted and observed by Defendant MEYERS and others, all of whom intentionally and without legal cause conducted and observed the strip and search. Plaintiff was then imprisoned by these defendants for approximately six or seven hours. Finally, she was released and thereby compelled to appear, again, in Branch 68 on 10 April 1975 (at which time plaintiff was, of course, "discharged" again, there being "no warrants outstanding").

13. Prior to and simultaneous with the arrest, charging, search, and imprisonment of 25 March 1975, defendants ZIEMKE, PAPPAS, MEYERS and other Chicago police officers obtained and were given information by MURRAY concerning this warrant and its recall; as a result, they knew or should have known that said warrant was void and that they were therefore acting illegally, their lawful authority as to MURRAY having long since been withdrawn by judicial order.

14. In fact, ZIEMKE, PAPPAS and MEYERS, acting pursuant to rules, regulations and laws of CITY and of Illinois and the United States had a constitutional duty

to determine the illegality of their ongoing conduct, as alleged by plaintiff, expeditiously and reasonably so as to spare plaintiff and those others in her situation, from the wrongs alleged within and material to this Complaint.

Further, and alternatively, if there existed no reasonably rapid and effective procedure available to these arresting officers to make the above determinations of illegality, then they had and continue to have a legal duty to make known to their superiors, including defendants ROCHFORD and O'GRADY acting for CITY, the fact of the unavailability of such adequate procedures; these officers knew or had reason to know (a) that warrants executed by them (such as upon plaintiff) had, on many occasions, been warrants previously recalled, and (b) that such warrants were therefore void.

15. The Other Presently Unknown defendants are those who, on or about 25 March 1975, and thereafter, were agents of CITY responsible within the scope of their employment, for planning, administering and directing the collection and dissemination of accurate data on the current validity or illegality of arrest warrants, such as the warrant herein issued and executed upon plaintiff in violation of her constitutional rights.

16. Defendant FINLEY, and those other of his fellow servants and employees also responsible on 13 January 1975 and on 25 March 1975, for authorizing, approving and implementing their duty to expeditiously communicate judicial orders concerning arrest warrants, did not, prior to 25 March 1975, fulfill their constitutional duty to communicate in a reasonable manner to these law enforcement defendants the fact that a judicial order of two and one-half months earlier had made illegal and unconstitutional the conduct then occurring upon and toward plaintiff on or about 25 March 1975.

17. As a direct and proximate result of the aforementioned acts, omissions, conduct and customs of the defendants, immediately after release from the unlawful custody alleged here, plaintiff was admitted to St. Joseph's Hospital, Chicago, Illinois, for five days, forced to seek emergency and continuing medical treatment, to incur much physical and mental injury and substantial expense and other losses; additionally, she was compelled to attend court on 10 April 1975, without reason, to defend nonexistent charges, to incur unwarranted costs and fees, and to suffer great fear, humiliation and degradation.

The conduct, procedures, and customs herein alleged occurred and continue to occur during the course of and as a result of defendants' knowing unconstitutional adoption, promulgation, ratification and implementation of policy statements, regulations and known custom. These acts and omissions occurred under color of state law; defendants knowing of the illegality of these policies, regulations and customs, negligently, willfully and wantonly caused them to occur and to continue, and took and continue to take no measures to prevent them. Thus, defendants negligently and intentionally deprived plaintiff of:

(a) her right to be free from State deprivation of liberty without due process and equal protection of the law, as guaranteed by the First, Fourth, Fifth, Ninth and Fourteenth Amendments, and by Title 42 U.S.C. §§1983, 1985, 1986 and 1988;

(b) her right to be free from arbitrary and unreasonable exercises of State police power, as guaranteed by the Ninth, Tenth and Fourteenth Amendments, and by Title 42 U.S.C. §§1983, 1985, 1986, and 1988; as well as

(c) her rights to be free from the physical and mental injuries alleged herein occurring from constitutional torts of these defendants.

WHEREFORE, plaintiff TONI MURRAY, prays for:

A. Judgment against defendants, each of them, jointly and severally, in the amount of ONE HUNDRED THOUSAND DOLLARS as and for compensatory and punitive damages;

B. a permanent injunction against further implementation of defendants' present policies and customs which permit unlawful arrests, charging, searches and imprisonment as a result of invalid and void warrants;

C. a permanent injunction that all defendants, collectively and cooperatively, develop and implement, within a reasonable time, a system within Chicago for the maintenance of readily available data from which the current legality of arrest warrants, contested and challenged by arrestees as being void and unlawful, can be determined in a constitutionally reasonable time by arresting police officers;

D. the costs and expenses of this litigation;

E. attorneys' fees (or alternatively, leave for plaintiff's counsel to file for same pursuant to federal statute or common law); and

F. such other and further relief as this Honorable Court shall deem meet, just and equitable.

TONI MURRAY, Plaintiff

by: _____
LAWRENCE SCHLAM (#2444)
Attorney for Plaintiff

Lewis University College of Law
Glen Ellyn, Illinois 60137
858-2349

Of Counsel:

HARVEY L. WALNER & ASSOCS., LTD.
230 W. Monroe Street
Suite 2000
Chicago, Illinois 60606

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

The undersigned plaintiff MURRAY affirms that she has read and understood the above Complaint and that it is true in substance and in fact to the best of her knowledge.

/s/ TONI MURRAY, Plaintiff

SUBSCRIBED and SWORN to
before me this 9th day
of February, 1979.

/s/ LAWRENCE SCHLAM

EXHIBIT A To Plaintiff's Complaint:

NOTICE OF CLAIM FOR PERSONAL INJURIES

John C. Marcin
City Clerk
City of Chicago
City Hall
Chicago, Illinois 60602

Stanley T. Kusper
County Clerk
County of Cook
113 N. Clark Street
Chicago, Illinois 60602

William R. Quinlan
Corporation Counsel
City of Chicago
122 North LaSalle
Chicago, Illinois 60602

Morgan M. Finley
Clerk of the Circuit
Court of Cook County
118 N. Clark Street
Chicago, Illinois 60602

You are hereby notified that TONI MURRAY will bring a civil action against the City of Chicago, the Chicago Police Department, the Clerk of the Circuit Court of Cook County, and one or more of their agents, officers, and employees, for damages on account of injuries suffered as noted below. This notice is given pursuant to *Ill. Rev. Stat.*, Ch. 85, §8-102:

1. Name of person to whom this cause of action accrued: TONI MURRARY
2. Name of injured person: TONI MURRAY
3. Address of injured person: 2123 N. Racine, Chicago, Illinois
4. Incident occurred on the 25th day of March, 1975, in the late morning and early afternoon hours, and continued for a period of time thereafter.
5. Locations of incident: 2123 N. Racine, 113 W. Chicago Ave., 1121 S. State St., and subsequently, in various courts and a hospital.
6. General nature of incident: False arrest at 2123 N. Racine by Chicago police officers, J. Ziemke, Star #2303, and T. Pappas, Star

#3456, on a void and invalid arrest warrant, consequent false imprisonment and unreasonable search by Chicago police officer Sgt. MEYERS, Star #967 and other officers presently unknown.

7. Attending physician: ZAGORKA BRESICH M.D.
8. Attending hospital: St. Joseph's Hospital, 2900 N. Lake Shore Drive, Chcago, Illinois.

By: /s/ LAWRENCE SCHLAM
Attorney for Claimant
110 S. Dearborn St., Room 1620
Chicago, Illinois 60603
263-1830

Of Counsel: *Illegible*

[Exhibit B To Plaintiff's Complaint Is Reproduced Herein At Page 31.]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

(Received April 26, 1979)

TONI MURRAY,

Plaintiff,

v.

CITY OF CHICAGO, etc., et al.,

Defendants.

No. 79 C 1176

MOTION TO DISMISS OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

Now comes defendant MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, by his attorney, BERNARD CAREY, State's Attorney of Cook County, and moves that this Court dismiss the complaint for failure to state a cause of action, or in the alternative enter a summary judgment in favor of defendant Finley. In support of this motion the defendant states:

A. Motion to Dismiss

1. No facts are alleged to show that defendant Finley was personally involved in any deprivation suffered by the plaintiff. As *respondeat superior* is not an applicable doctrine in either Section 1983 or Section 1331 actions, and personal involvement is the touchstone of liability in

such actions, the complaint fails to state a claim against defendant Finley upon which relief can be based.

2. It is nowhere alleged that defendant Finley acted deliberately to deprive the plaintiff of her civil rights. As an allegation of mere negligence does not state a claim under Sections 1983 and 1331, the complaint fails to state a claim against defendant Finley.

3. Insofar as the plaintiff seeks damages against defendant Finley, the plaintiff nowhere alleges that defendant Finley acted in bad faith or with intent to harm the plaintiff. Accordingly, defendant Finley is immune from an award of damages in this action.

4. Insofar as the plaintiff seeks that this Court enjoin the Office of the Clerk to institute certain new procedures, doctrines of comity and federalism preclude the Court from entering such relief.

B. Motion for Summary Judgment

1. The attached documents and affidavits establish:

a. That the Office of the Clerk has detailed procedures for effectively handling warrant recall orders.

b. That it appears that these procedures were fully followed in the case of the January 13, 1975 recall of the outstanding warrant in the case of *People v. Toni Murray*, 71 M1-G453066.

2. If there was any breakdown in the system in this case, it was the result of mere negligence or inadvertence, which does not arise to a constitutional deprivation as a matter of law.

WHEREFORE, defendant Finley prays that the Court will grant the relief he seeks.

BERNARD CAREY
State's Attorney of Cook County

By: ELLEN G. ROBINSON
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602
443-5444

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT

Now comes ROBERT GROSSMAN, first having been duly sworn on oath and states:

1. In my official capacity I am the Chief Deputy Clerk of the First Municipal District, Criminal Department, of the Circuit Court of Cook County.

2. In this capacity I am charged with supervising the activities of all the clerks of the courts of the First Municipal District, Criminal Department. In addition, I supervise the keeping of the records of these courts.

3. I have examined the contents of the court file for the case of *People v. Toni Murray*, 74 MI G453066. This file consists of various documents including a "half-sheet," and a warrant recall order. These documents constitute records made in the course of regularly conducted courtroom activity by clerks who were present at the time the activity occurred and who were charged with the duty to make these records as part of their regular duties. (See exhibits 1 and 2)

4. When an outstanding warrant is ordered recalled by a judge, it is the duty of the clerk to follow this procedure:

a. The clerk notes the recall order on the "half-sheet."

b. The clerk fills out a warrant recall order and obtains the judge's signature.

c. The clerk sends the original of this order to the Chicago Police Department and sends copies of the order to the Office of the Clerk by placing all copies with outbound mail.

d. The clerk places a copy of the order in the court file.

5. This procedure for handling warrant recalls was devised by a committee consisting of the Executive Director of the Chicago Crime Commission, the Presiding Judge of the First Municipal District, Criminal Division, representatives from the State's Attorney's Office, the Chicago Police Department, and the Office of the Clerk of the Circuit Court of Cook County. (See attached Memorandum to Clerk, August 13, 1974. Exhibit 3.)

6. This procedure is described fully on pages 27, 28 of the operating manual distributed to all deputy clerks of the Circuit Courts of Cook County. (See exhibit 4)

7. Based upon my personal investigation of the matter alleged in this complaint, it is my opinion that the above-described procedures were followed by all persons under my supervision responsible for recalling the outstanding warrant for Ms. Toni Murray on January 13, 1975.

/s/ ROBERT GROSSMAN

Subscribed and Sworn to
before me this 19 day of
April, 1979.

/s/ PETER J. JUSTES
Notary Public

EXHIBIT 2

STATE OF ILLINOIS)
) ss.
CITY OF CHICAGO)

January 13, 1975

In The Circuit Court of Cook County, Illinois
MUNICIPAL DEPARTMENT, FIRST DISTRICT
No. 131593

ORDER

MATTHEW J. DANAHER
CLERK OF COURT

IT IS ORDERED that the capias, warrant or attachment in Case No. G453066 entitled THE PEOPLE OF THE STATE OF ILLINOIS — CITY OF CHICAGO — PARK DISTRICT v. TONI MURRAY be recalled and returned to above mentioned file and upon return thereto, said file(s) shall be delivered to Branch No. 68 located at _____.
Nature of motion warrant recall.
SET DATE January 27, 1975 CASH BOND AMOUNT ____
BONDSMAN _____

_____
Signature of Defendant or his Attorney

PRESENTED BY:

/s/ MAURICE MCNICHOLAS
Deputy Clerk

Enter: /s/ M. GOLDSTEIN
JUDGE

Date issued to Police January 13, 1975
Date returned _____ 19____

EXHIBIT 3

COUNTY OF COOK
OFFICE OF CLERK OF THE CIRCUIT COURT

TO: Clerks - Criminal Department DATE 8/13/74

FROM: R. Grossman -

SUBJECT: NEW PROCEDURE ON BRING-BACK OF B/F Files Effective August 15, 1974.

The following program has been developed by a group composed of representatives of the Clerk's Office, Presiding Judge, and Police Department, as well as the State's Attorneys Office. This group was appointed by the Mayor's Committee on Criminal Justice of Cook County Ad Hoc Committee.

The purpose of this program is to insure notification of arresting officers and complainants in all cases where there has been a Bond Forfeiture and Warrant when that case is reinstated, either by a voluntary appearance or after arrest on warrant by the defendant.

Commencing August 15, 1974, the following procedure will be used in all cases where a bring-back or inter-office memo is used to order a file from the Civic Center:

1. The Court Clerks shall prepare the bring-back or inter-office memo, and on cases brought back prior to judgment shall assign the judgment date as the next court date (court citing date card attached). Where judgment has already been entered - a date at least two weeks later shall be given.

All bring-back forms must be signed by the Judge. The most important point is *no* files will be returned to court without the signature of the Court Sergeant on the bring-back or inter-office memo.

2. The second copy of the prepared form shall be given to the Court Sergeant who will then sign the third copy; three copies of the bring-back or inter-office memo will be sent to Room #1006, Civic Center, for transmittal of the file, and for recall of the warrant. There will be no necessity for the court clerk to keep a copy for his records since a copy is available in the court (Court Sergeant's copy). Under no circumstances will a file be sent back without a bring-back - via phone call the same day - or after being set for a short date.

EXHIBIT 4

required to attach a supplemental half-sheet to the file so that the day's order may be properly recorded and so that he has a copy of the order which must be transferred to the original half-sheet when the original court file is obtained. The inter-office memos, after their completions, are also retained in a convenient place until the work is broken down at the end of court.

C. RECALLS AND INTER-OFFICE MEMOS:

Another consideration concerns the recalling and proper quashing of warrants. From time to time the clerk will be required to process motions to recall warrant and motions to vacate bond forfeitures. This is a particularly crucial area for the clerks, as a failure to follow the correct procedure may expose both the individual clerk and the clerk's office to liability under the Civil Rights Act Title 42 USC §1983 as an infringement of a defendant's civil rights. Indeed this is a very serious area that may cause the defendant to be subsequently and wrongfully rearrested on a warrant that should not be properly still outstanding. Whenever the judge sus-

tains a motion to recall a warrant or a motion to vacate a bond forfeiture or simply orders a warrant recalled or quashed, it is the clerk's duty to immediately complete and issue a warrant recall. The warrant recall form itself is self-explanatory, and a copy of the form is appended. The primary difference between a warrant recall and an inter-office memo, is that a warrant recall requires the judge's signature; this is an absolute must. Other than the requirements of the judge's signature requirement, the information required on the warrant recall form is identical to that of the inter-office memo with the same requirement of the Court Sergeant's signature. Both forms are four-part form sets where the blue copy is given to the Court Sergeant and the yellow copy is to be retained in the form book, with the other two copies being sent into the office immediately when the work is broken down at the end of the day. On the appropriate set date the returned warrant and file must be attached along with any written motions before the case is entered upon that day's court call. If, however, the case has been disposed of with a final order before the warrant has been returned to court after being recalled, the clerk will send the warrant and recall copy to the vault to be made part of the file. Again - it is absolutely vital that when the judge orders a recall or that the warrant be quashed, a written warrant recall must be completed and issued immediately. The recall number should be noted on the half-sheet or on the motion that has been filed, as well as the recall copy in the recall book, both for ready reference and protection of the Court.

EXHIBIT 5

AFFIDAVIT:

Now comes Maurice McNicholas, Deputy Clerk, and on oath deposes the following:

As best as I can recollect, on January 13, 1975, I was the Deputy Court Clerk assigned to Branch 68, Room 1104, Daley Center in what was then called the Civic Center.

I was responsible for calling the cases that day. The case of People of the State of Illinois vs. Toni Murray, docket No. G453066 was listed on the judgment sheet for that day. The presiding Judge in Branch 68, that day, was the Honorable Meyer Goldstein.

When the above mentioned case was called, Judge Goldstein entered an order recalling the warrant granting an I bond to Toni Murray in the amount of $500.00, and the case was continued by motion of the State to January 27, 1975.

I filled out a warrant recall form No. 131593, and had Judge Goldstein sign it, and then I signed it. I was unable to get Miss Murray's signature. A different Deputy Clerk made out her I bond.

I kept one copy of the warrant recall form for the file. The rest of the copies were placed in the bundle of out work for that day from Branch 68. Said bundle was then deposited by me at a receiving location for disposal and sorting of forms and files. This sorting work is done by other Deputy Court Clerks, and I have no further knowledge of what occurred on that day to the recall forms.

/s/ MAURICE MCNICHOLAS
Deputy Clerk
First Municipal District
Clerk of Circuit Court

April 10, 1979

Subscribed and sworn to before me
this 10th day of April 1979.

NOTARY PUBLIC /s/ HELEN THERESE MURRAY
My commission expires September, 1981.

PROCEDURE RE: MOTION TO VACATE BOND FORFEITURE AND RECALL OF WARRANTS IN ALL COURTS (EXCEPT TRAFFIC)

General Order No. 74-8(M)

All motions to vacate bond forfeiture and warrants orders, made prior to the judgment date (which is the next scheduled police citing date, at least 30 days after the forfeiture order), shall be processed as follows:

a. Upon filing, provided at least two weeks remains prior to judgment date, the motion shall be entered and continued to the judgment date.

b. The warrant may be recalled, provided defendant is in court. The clerk shall deliver the warrant recall to the Central Warrant Unit. The court sergeant shall notify the witnesses of the trial date which shall be the judgment date.

c. In the event less than two weeks remain, prior to judgment date, the motion shall be continued to judgment date, and on judgment date said matter shall be continued to a trial date, at least, two weeks later.

d. The warrant may be recalled, provided defendant is in court. The clerk shall deliver the warrant recall order to the Central Warrant Unit. The court sergeant shall notify the witnesses of the trial date.

e. In the event defendant fails to appear, the judgment of forfeiture shall be ordered and the warrant reissued.

All motions to vacate bond forfeiture and/or judgment of forfeitures made after the judgment date shall be processed as follows:

a. Upon filing, the motion shall be entered and continued to a trial date of not less than two weeks. Court files shall be ordered for the trial date.

b. The warrant may be recalled, provided defendant is in court. The clerk shall deliver the warrant recall order to the Central Warrant Unit. The court sergeant shall notify the witnesses of the trial date.

c. At the trial date all pertinent files must be available and all orders properly entered thereon. This includes vacatures of any forfeiture or forfeiture judgment and the recall of warrant. All documents must be attached to the Master Court File.

d. In the event defendant fails to appear, the judgment of forfeiture shall be ordered and the warrant reissued.

e. Draft Order (form attached) must accompany vacatures if bond is to be refunded. (If refund is to be made to defendant's attorney it shall so specify on this draft order, and must be accompanied, by order for refund to attorney, duly executed by the defendant and the court.) No draft order will be processed for refund until final disposition of all matters covered by the bond.

The order, dated at Chicago, August 13, 1974, is signed by Eugene L. Wachowski, presiding judge.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TONI MURRAY,

Plaintiff,

vs.

CITY OF CHICAGO, et al.,

Defendants.

No. 79 C 1176
Judge Hoffman

AFFIDAVIT

I, JOHN ZIEMKE, being first duly sworn, state and depose as follows:

That, I am a Chicago Police Officer employed as a Warrant Officer in the 18th Police District Warrant Unit and was so employed on March 25, 1975.

That, my duties include attempting to serve warrants and determining whether such warrants are still current.

That, my partner Theodore Pappas and I received a warrant issued against plaintiff in this cause and served such on March 25, 1975.

That, pursuant to said warrant we proceeded to 2123 North Racine Avenue and arrested plaintiff.

At the district station, Central Warrant Section was contacted wherein it was established that the warrant was still current.

That, at this time the Arrest Slip was prepared and plaintiff was transported to Central Detention Section at 1121 South State Street, Chicago, Illinois.

That, at no time did I know that the warrant in question had been recalled.

/s/ JOHN ZIEMKE

SUBSCRIBED and SWORN to
before me this 11th day
of April, 1979.

/s/ JENNIFER DUNCAN-BRICE
NOTARY PUBLIC

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TONI MURRAY,

Plaintiff,

vs.

CITY OF CHICAGO, et al.,

Defendants.

No. 79 C 1176
Judge Hoffman

AFFIDAVIT

I, THEODORE PAPPAS, being first duly sworn, state and depose as follows:

That, I am a Chicago Police Officer employed as a Warrant Officer in the 18th Police District Warrant Unit and was so employed on March 25, 1975.

That, my duties include attempting to serve warrants and determining whether such warrants are still current.

That, my partner John Ziemke and I received a warrant issued against plaintiff in this cause and served such on March 25, 1975.

That, pursuant to said warrant we proceeded to 2123 North Racine Avenue and arrested plaintiff.

At the district station, Central Warrant Section was contacted wherein it was established that the warrant was still current.

That, at this time the Arrest Slip was prepared and plaintiff was transported to Central Detention Section at 1121 South State Street, Chicago, Illinois.

That, at no time did I know that the warrant in question had been recalled.

/s/ THEODORE PAPPAS

SUBSCRIBED and SWORN to
before me this 11th day
of April, 1979.

/s/ JENNIFER DUNCAN-BRICE
NOTARY PUBLIC

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TONI MURRAY,

Plaintiff,

vs.

CITY OF CHICAGO, et al.,

Defendants.

No. 79 C 1176
Judge Hoffman

AFFIDAVIT

I, BERNARD KELLY, being first duly sworn on oath, depose and state as follows:

1. That I am an employee of the City of Chicago Police Department, presently holding the position of sergeant.

2. I am presently assigned to the Warrant Division at Police Headquarters at 1121 South State as Warrant Sergeant.

3. That at the time relevant herein, the warrant in question concerning the plaintiff herein should be referred to as Warrant Docket Number G 453066 and not D 7641252 as incorrectly referred to in the herein plaintiff's Complaint.

4. That I searched the Chicago Police Department's internal warrant recall book and found no listing of recall of said warrant.

5. That I searched the Court transmittal sheets for 13 January 1975 and 10 February 1975 and have not found a record of recall of said Warrant being issued.

6. Pursuant to my search of the record, the Chicago Police Department did not receive notice of Warrant Recall Court Docket Number G453066 concerning the plaintiff herein.

/s/ BERNARD KELLY

Subscribed and Sworn to
Before Me this 11 day
of April, A.D., 1979

/s/ ELMER L. FOX
NOTARY PUBLIC

(Case Number) JUN 2 2 1974 (Court Date)

CLERK OF THE CIRCUIT COURT OF COOK COUNTY

CMCI-225 (1973) MISDEMEANOR

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of the State of Illinois
Plaintiff

v.

COMPLAINT

No. G463066

Toni Murra

Apropos, Inc. an Illinois Corporation complainant, now appears before
(Complainant's Name Printed or Typed)

The Circuit Ca of Cook County and states that

Toni Murra
(Defendant)

has, on or about April 6, 1974 (Date) at 3315 N Broadway Chicago, Cook County, (Place of offense)

committed the offense of Deceptive Practice in that

obtained control over the property of Apropos, Inc.

, an Illinois Corporation; to wit, ladie's

clothes

, the value of $47.25 U.S. Currency, with the intent to defraud said

complainant, and did issue and deliver a certain bank check drawn upon the

Michigan Avenue National Bank of Chicago , Illinois

in the amount of $47.25 U.S. Currency, knowing that said check would not

be paid by the Michigan Avenue National Bank

in violation of Chapter 38 Section 17-1 (d)

ILLINOIS REVISED STATUTES

FILED
MUNICIPAL COURT OF CHICAGO
FIRST MUNICIPAL DISTRICT
OF CIRCUIT COURT, COOK COUNTY
JUN 18 1974
CLERK OF COURT

James J. Elkin
(Complainant's Signature)

3315 N Broadway Chicago, IL 528-2130
(Complainant's Address) (Telephone No.)

Apropos, Inc. an Illinois Corporation
(Complainant's Name Printed or Typed)

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

being first duly sworn, on oath says that he has read the foregoing complaint by him subscribed and that the same is true.

James J. Elkin
(Complainant's Signature)

Subscribed and sworn to before me 6/18, 19 74

(Judge or Clerk)

I have examined the above complaint and the person presenting the same and have heard evidence thereon, and am satisfied that there is probable cause for filing same. Leave is given to file the said complaint.

Summons Issued. Judge

or

Warrant Issued. Bail set at

Judge

Defendant Finley's EXHIBIT 1
Plaintiff's EXHIBIT B to §1983 Complaint

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
Tom Finley

Section 38-17-10

NO. 6453066 BR68

DATE	PAPERS FILED AND WRITS ISSUED
JUN 1 8 1974	Information Filed
JUL 1 3 1974	SUM ELD RET NOT FOUND
	Warrant Issued
JULY 2 8 1974	Warrant Returned Executed and Filed
DEC 9 1974	BF Warrant Issued
APR 3 1975	Warrant Returned Executed and Filed 0764 1252

DATE	JUDGE	ORDERS ENTERED
JUL 2 2 1974	MICHAEL E. ZLATNIK	Leave to to file Complaint. Bail $ Court takes jurisdiction of defendant in court on complaint filed.
	MICHAEL E. ZLATNIK	Warrant of Bail $500 MS 12-9-74
DEC 9 1974	MICHAEL E. ZLATNIK	BR68 Recognizance of defendant and surety forfeited Capias issued vs. defendant $1500
JAN 1 3 1975	Solbitz	MS 1-27-75 Bond $500 Warrant Recalled I 242 11
JAN 2 7 1975	MICHAEL F. ZLATNIK	MS 2-10-75 Defendant need not be in court at the date and time of disposition of cause, defendant will be discharged

DATE	JUDGE	ORDERS ENTERED
JAN 2 7 1975	MICHAEL F. ZLATNIK	
2-10-75	MICHAEL F. ZLATNIK	MD Case dismissed
APR 1 0 1975	MICHAEL F. ZLATNIK	MS Disch CBR No warrants outstanding